

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1905-MSW-E TCEQ ID: RN105376651 CASE NO.: 36912**  
**RESPONDENT NAME: STANLEY MCMAHAN**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 202 Limestone County Road 461, Mexia, Limestone County

**TYPE OF OPERATION:** unauthorized disposal site

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 5, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**  
TCEQ Attorney: Mr. Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
TCEQ Enforcement Coordinator: Mr. Keith Frank, Waste Enforcement Section, MC 128, (512) 239-1203  
TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001  
Respondent: Mr. Stanley McMahan, 202 Limestone County, Road 461, Mexia, Texas 76667  
Respondent's Attorney: Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 12, 2008</p> <p><b>Date of NOE Relating to this Case:</b> November 24, 2008</p> <p><b>Background Facts:</b> On July 16, 2009, the EDPRP was filed and hand-delivered to the Respondent by personnel of the Limestone County Sheriff's Department. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>MSW:</b> Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p><b>Total Assessed:</b> \$2,750</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$2,750</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"><li>1. Immediately cease disposing of any additional waste at the Site;</li><li>2. Within 30 days remove all municipal solid waste from the Site and dispose of the wastes at an authorized facility; and</li><li>3. Within 45 days submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.</li></ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-Dec-2008	Screening	11-Dec-2008	EPA Due	
	PCW	2-Apr-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Stanley McMahan		
Reg. Ent. Ref. No.	RN105376651		
Facility/Site Region	9-Waco	Major/Minor Source	Major

## CASE INFORMATION

Enf./Case ID No.	36912	No. of Violations	1
Docket No.	2008-1905-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,500</b>
---	-------------------	----------------

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>10.0% Enhancement</b>	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$250</b>
---------------------------	--------------------------	--------------------------------	--------------

Notes	The Respondent has received two NOV's for same or similar violations.
-------	---

<b>Culpability</b>	<b>No</b>	<b>0.0% Enhancement</b>	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	-----------	-------------------------	-------------------	------------

Notes	The Respondent does not meet the culpability criteria.
-------	--

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
--	-------------------	------------

<b>Economic Benefit</b>	<b>0.0% Enhancement*</b>	<b>Subtotal 6</b>	<b>\$0</b>
-------------------------	--------------------------	-------------------	------------

Total EB Amounts	\$412
Approx. Cost of Compliance	\$4,547

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$2,750</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	<b>Adjustment</b>	<b>\$0</b>
---	-------------	-------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
-------	--

<b>Final Penalty Amount</b>	<b>\$2,750</b>
-----------------------------	----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$2,750</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	<b>0.0%</b>	<b>Reduction</b>	<b>Adjustment</b>	<b>\$0</b>
-----------------	-------------	------------------	-------------------	------------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
-------	--

<b>PAYABLE PENALTY</b>	<b>\$2,750</b>
------------------------	----------------

Screening Date 11-Dec-2008

Docket No. 2008-1905-MSW-E

PCW

Respondent Stanley McMahan

Policy Revision 2 (September 2002)

Case ID No. 36912

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105376651

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent has received two NOVs for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 10%

<b>Screening Date</b> 11-Dec-2008		<b>Docket No.</b> 2008-1905-MSW-E		<b>PCW</b>		
<b>Respondent</b> Stanley McMahan		<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 36912		<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN105376651						
<b>Media [Statute]</b> Municipal Solid Waste						
<b>Enf. Coordinator</b> Keith Frank						
<b>Violation Number</b>		<div style="border: 1px solid black; width: 60px; text-align: center;">1</div>				
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 330.15(c)</div>				
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 5px;">Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, the Respondent allowed approximately 2,000 scrap tires (approximately 200 cubic yards) to be disposed of at the Site.</div>				
<b>Base Penalty</b>					<div style="border: 1px solid black; width: 100px; text-align: right;">\$10,000</div>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
OR	<b>Release</b>		<b>Harm</b>			
		Major	Moderate	Minor		
	Actual	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	X		
	Potential	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	X		
		<b>Percent</b>			<div style="border: 1px solid black; width: 60px; text-align: right;">25%</div>	
<b>&gt;&gt; Programmatic Matrix</b>						
		Falsification	Major	Moderate	Minor	
		<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	X	
		<b>Percent</b>			<div style="border: 1px solid black; width: 60px; text-align: right;">0%</div>	
<b>Matrix Notes</b>		Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.				
<b>Adjustment</b>					<div style="border: 1px solid black; width: 100px; text-align: right;">\$7,500</div>	
					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>	
<b>Violation Events</b>						
<b>Number of Violation Events</b>		<div style="border: 1px solid black; width: 60px; text-align: center;">1</div>	<b>Number of violation days</b>			
		<div style="border: 1px solid black; width: 60px; text-align: center;">29</div>				
mark only one with an x	daily	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	<b>Violation Base Penalty</b>			
	weekly	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>				
	monthly	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>				
	quarterly	X				
	semiannual	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>				
	annual	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>				
	single event	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>				
One quarterly event is recommended from the November 12, 2008 record review date to the December 11, 2008 screening date.					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>	
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>		<div style="border: 1px solid black; width: 100px; text-align: right;">\$0</div>		
		Before NOV	NOV to EDPRP/Settlement Offer			
Extraordinary	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>	The Respondent does not meet the good faith criteria for this violation.				
Ordinary	<div style="border: 1px solid black; width: 60px; height: 20px;"></div>					
N/A	X					
<b>Notes</b>						
<b>Violation Subtotal</b>					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>	
<b>Economic Benefit (EB) for this violation</b>						
<b>Estimated EB Amount</b>		<div style="border: 1px solid black; width: 100px; text-align: right;">\$412</div>		<b>Violation Final Penalty Total</b>		
				<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,750</div>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,750</div>	

**Economic Benefit Worksheet**

Respondent Stanley McMahan

Case ID No. 36912

Reg. Ent. Reference No. RN105376651

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	------------------------------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$4,547	27-Nov-2007	19-Sep-2009	1.81	\$412	n/a	\$412
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of 2,000 scrap tires at an authorized disposal site. Date required is the first documented date of the violation and the final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,547

TOTAL

\$412

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603269333 MCMAHAN, STANLEY Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN105376651 202 LCR 461 Classification: AVERAGE Site Rating: 3.00  
ID Number(s):  
Location: 202 LCR 461, MEXIA, TX, 76667  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: December 09, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 09, 2003 to December 09, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Keith Frank Phone: 239 - 1203

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 08/21/2008 (699787)  
2 09/16/2008 (702915)  
3 12/03/2008 (708020)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 01/18/2008 (610018)  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to obtain written authorization from the TCEQ prior to the dumping or disposal of municipal solid waste.  
Date: 06/24/2008 (699787)  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to obtain written authorization from the TCEQ prior to the dumping or disposal of municipal solid waste.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
STANLEY MCMAHAN,  
RN105376651**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-1905-MSW-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Stanley McMahan ("Mr. McMahan").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. McMahan owns and operates an unauthorized disposal site located at 202 Limestone County Road 461 in Mexia, Limestone County, Texas (the "Site")
2. The Site involves the management or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on November 12, 2008, a TCEQ Waco Regional Office investigator documented that Mr. McMahan failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. McMahan allowed approximately 2,000 scrap tires (approximately 200 cubic yards) to be disposed of at the Site.
4. Mr. McMahan received notice of the violation on or about November 29, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement



Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Stanley McMahan" (the "EDPRP") in the TCEQ Chief Clerk's office on July 16, 2009.

6. On July 16, 2009, notice of the EDPRP was hand delivered to Mr. McMahan in person by Limestone County Deputy Sheriff Brett New.
7. More than 20 days have elapsed since Mr. McMahan received notice of the EDPRP, provided by the Executive Director. Mr. McMahan failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. McMahan is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., Mr. McMahan failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. McMahan with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(2).
4. As evidenced by Finding of Fact No. 7, Mr. McMahan failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. McMahan and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. McMahan for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. McMahan is assessed an administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. McMahan's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Stanley McMahan; Docket No. 2008-1905-MSW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. McMahan shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, cease disposing of any additional waste at the Site;
  - b. Within 30 days after the effective date of this Order, remove all municipal solid waste from the Site and dispose of the wastes at an authorized facility; and
  - c. Within 45 days after the effective date of this Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Corrective Action Ordering Provision Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe

that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. McMahan. Mr. McMahan is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. McMahan fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. McMahan's failure to comply is not a violation of this Order. Mr. McMahan shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. McMahan shall notify the Executive Director within seven days after Mr. McMahan becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. McMahan shall be made in writing to the Executive Director. Extensions are not effective until Mr. McMahan receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. McMahan if the Executive Director determines that Mr. McMahan has not complied with one or more of the terms or conditions in this Order.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## **SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

For the Commission

AFFIDAVIT

STATE OF TEXAS

§  
§  
§

COUNTY OF LIMESTONE

My name is Brett New. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On July 16, 2009, I hand delivered a true and correct copy of the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Stanley McMahon" to Stanley McMahon.

*Brett New*

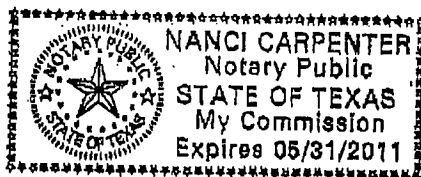
Brett New

Limestone County Deputy Sheriff

Before me, the undersigned authority, on this day appeared Brett New, personally known to me to be the person whose name is subscribed to the foregoing instrument and upon his oath acknowledged to me that the facts stated herein are true and correct.

Given under my hand and seal of office this 28<sup>th</sup> day of August, 2009.

*Nanci Carpenter*  
Notary Public, State of Texas



# AFFIDAVIT OF BENJAMIN O. THOMPSON

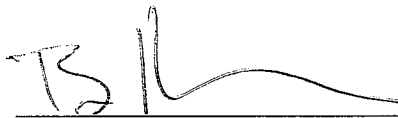
STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

"My name is Benjamin O. Thompson. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Stanley McMahan" (the "EDPRP") was filed with the Office of the Chief Clerk on July 16, 2009.

I sent the EDPRP to Brett New, a Deputy Sheriff with the Limestone County Sheriff's Department, for hand delivery to Stanley McMahan ("Mr. McMahan"). I received an affidavit signed by Deputy New, indicating the EDPRP was hand delivered to Mr. McMahan on July 16, 2009.

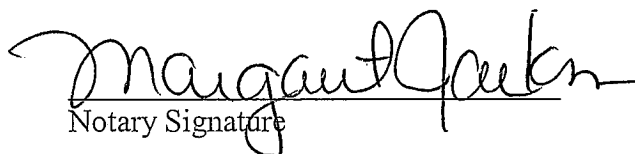
More than 20 days have elapsed since Mr. McMahan received notice of the EDPRP. Mr. McMahan failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".



Benjamin O. Thompson  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10 day of August A.D., 2009.



Notary Signature